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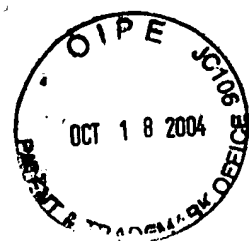
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Correspondence being mailed: Response to Office  
Action and Newly  
Presented Claims, and  
Form 1449



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: WEINBERGER, Michael  
Serial number: 10/757,096  
Filed: January 14, 2004  
Title: HEARTH ILLUMINATOR  
Group Art Unit: (not yet assigned)  
Examiner: Carl D. Price

**RESPONSE TO OFFICE ACTION AND NEWLY PRESENTED CLAIMS**

Dear Sir:

I have your Office Action mailed July 9, 2004.

First, let me say "thank you" for your excellent guidance on the phone and for faxing me PTO Form 892. I could not find the form in the envelope that had the Office Action.

This document will respond to the points made in the Office Action. It also withdraws the previously made Claims 1-3, and contains Claims 4-5 (Newly Presented).

**INFORMATION DISCLOSURE STATEMENT**

The Office Action noted that a proper Information Disclosure Statement was not included in the original application. Accordingly, an Information Disclosure Statement is enclosed herein.

## CLAIMS

The Office Action rejected all the pending claims.

Based on the excellent guidance I have received from the Honorable Claim Examiner, I hereby submit Newly Presented Claims that should resolve all of the issues the old claims presented.

In addition, I respectfully answer the points in the Office Action as follows:

### CLAIM 1

The office action did not give patentable weight to the terms “convenient” and “hearth illumination”. It also deemed “disposable” to be a recitation of the intended use of the invention. In response, Newly Presented Claims 4 - 5, enclosed herein, omit those phrases.

The Office Action also rejected Claim 1 in view of Marino, US Patent 2,508,959, noting in part that Marino showed a “logset...with multiple exit openings (28).”

Marino, however, describes “...outlet openings 28 through which the fumes of the burning incense” pass. (Emphasis added.) Marino does not describe openings through which flames may pass.

Claim 4 (Newly Presented), therefore, makes it clear that the current invention contains multiple flame exit openings.

Support for this is found in several portions of the application. For example, page 14, line 25, specifically references “multiple flame exit openings.”

Moreover, Marino does not describe a realistic fireplace fire.

In this regard, please note that a fireplace fire is different from a campfire, a stovetop fire, a food warmer fire, or other types of fires.

This is because fireplaces are wider than they are deep. Likewise, the fires inside fireplaces are wider than they are deep.

Also, fireplace fires consist of multiple flames, that peak and flutter, and are surrounded by logs and twigs.

Marino does not describe an apparatus which simulates such a realistic fireplace fire.

Newly Presented Claim 4 makes it clear that the current invention does simulate such a realistic fireplace fire.

Support for this is found throughout the current application. For example, references to a "realistic" fireplace fire appear in the application at page 1, line 27; page 2 line 24; and page 15, line 23.

The application also refers to the invention's ability to simulate a "real fireplace". See, for example, page 13, line 29.

Because I am not a patent attorney, however, to the extent Claim 4 (Newly Presented) is still not worded correctly, if in fact this is the case, I hereby request additional assistance from the Honorable Claim Examiner so that an allowable claim may be written.

## CLAIM 2

The Office Action objected to the terms “disposable”, and “which fits into a void created by a one piece simulated log set that sits in front of, over, and partially surrounding the cartridge” in claim 2. This objection has been addressed by the newly presented claims.

Claim 2 was also rejected as being anticipated by Orlov et al (US Patent 5,026,271), or Waddell et al (US Patent 3,292,608), or Blankenship (US Patent 4,850,858). Each of those objections will be answered separately.

Regarding Orlov, the Office Action states Orlov shows:

“a rectangular shape fuel cartridge (30,32) made out of a light gauge metal which holds fuel. The cartridge has a top wall (34) that includes a removable lid (52), and where the removal of the lid permits vapors from the alcohol gel fuel to escape.”

With respect, there are four responses to this.

First, Orlov component 30 is not a fuel cartridge, as the Office Action states. Instead, 30 is a drawer, as Orlov makes clear at column 3, line 22. This drawer holds a separate metal box which Orlov calls, at column 3, line 11, a “reservoir.” (This “reservoir” is also different from my cartridge, as explained later.)

Second, Orlov component 34 is not the top of the fuel reservoir 32, as the Office Action states, but rather, is the “aperture plate” which is “positioned above the reservoir”, as Orlov specifically states at column 3, lines 12-13.

Third, Orlov component 52 is not the removable lid to Orlov's "fuel reservoir" 32, as the Office Action states, but rather, is the "snuffer plate" portion of the drawer mechanism, as Orlov explains at column 3, lines 29-45, and specifically, lines 33 and 41.

And fourth, Orlov's "fuel reservoir" is different from my fuel cartridge.

Orlov specifically states, at column 1, line 42, that his "fuel reservoir" may have "no cover at all." My fuel cartridge, however, has a cover. The cover consists of two parts (22a and 22b) that serve an important purpose.

Parts 22a and 22b, working together create a specifically defined fuel exit aperture 23 (or apertures) in the top of the cartridge.

The size of the fuel exit aperture determines how the fuel in an individual cartridge will burn, and this, in turn, determines flame size, number, and burn time. As my application states:

"...larger fuel exit apertures 23 will expose more fuel 24, resulting in more, and/or larger flames 38a-c. Likewise, smaller fuel exit apertures 23 will expose less fuel 24, resulting in smaller, and/or fewer flames. Assuming fuel cartridges 19 holding identical amounts of fuel, the smaller and/or fewer flames will burn longer than larger and/or more numerous flames, and vice versa.

Application Page 14, lines 8-13.

Rather than controlling his flames this way, using the cartridge or "reservoir" itself, Orlov uses separate components to control his flames.

These components include an aperture plate 34, a snuffer plate 52, a control rod 54, a control knob 56, a lug 58, and others.

As Orlov states in the last paragraph of the patent:

“One can then control the amount of flame emanating by moving the knob forwardly so that the snuffer plate acts as a regulating means and partially closes the aperture 36 to the desired degree.”

My invention does not require the movement of any knobs to regulate the fire. Such manual control and such components are not necessary in my invention.

In addition, there are other factors which distinguish my invention from Orlov's, but I will not mention them here because they were not discussed in the Office Action.

\* \* \* \*

Regarding Waddell et al (US Patent 3,292,608) the Office Action states this patent shows “a rectangular shape fuel cartridge (4) made out of a light gauge metal which holds fuel. The cartridge has a top wall (8) that includes a removable lid (7)...where the removal of the lid permits vapors from the alcohol gel fuel to escape.”

With respect it should be noted that Waddell never mentions “alcohol gel fuel”. Instead, he specifically states his invention “is filled with a wax”, which he defines to mean “both petroleum waxes and petrolatums.” Column 2, lines 38-38.

Alcohol gel and wax are different fuels which burn very differently from one another. The newly presented claims are now limited to alcohol gel, which solves this problem, but as an aside it should be noted that alcohol gel is thick. That is why it is called a gel.

In fact, Waddell's invention probably would not work if it contained alcohol gel. The gel would probably not move freely through Waddell's wick.

Indeed, even when a container of alcohol gel is heated through ignition of the gel, the gel in the container does not flow like a liquid, and it certainly does not flow the way melted wax flows when it moves through a wick.

In any event, the newly presented claims, drafted with the excellent assistance of the Honorable Claim Examiner, now specifically refer to alcohol gel fuel, which solves this problem.

In addition, there are at least four other differences between Waddell and my invention.

First, Waddell's invention requires a wick. It cannot be used without a wick. Nor does Waddell describe an alternative embodiment which lacks a wick.

My invention, however, does not need a wick and does not use a wick.

Second, Waddell's invention uses manually adjustable cover plates 7, to "control the burning rate during the operation of the heater. Column 2 at lines 68-69.

My invention, however, does not use manually adjustable components to control the fire it produces. Instead, it uses set openings in the fuel cartridge to control the fire.

Third, Waddell's invention is a heater, not an illuminator. Paragraph 1 of Waddell's claims specifically the invention is "a heater." As the title to my invention states, it is an illuminator. No claim is made regarding my invention's capacity to generate heat.

Fourth, Waddell's invention does not produce an illumination effect that simulates a realistic fireplace fire. It produces a single large flame, as opposed to multiple flames that peak and flutter.



Moreover, Waddell also has no log set and hence produces no flames that are surrounded by logs and twigs, the way flames in a real fireplace are.

In addition, there are many other differences between Waddell's orchard heater and my hearth illumination device. I can address these other differences if specifically asked to do so.

\* \* \* \*

Regarding Blankenship (US Patent 4,850,858) the Office Action states this patent shows "a rectangular shape fuel cartridge (10) made out of a light gauge metal which holds fuel. The cartridge has a top wall (24) that includes a removable lid (27) and where the removal of the lid permits vapors from the alcohol gel fuel to escape."

With respect, however, it should be noted that Blankenship does not show a rectangular cartridge. Figures 2, 4 and 7 of Blankenship clearly show a round can of the type ordinarily associated with "Sterno Type" cans, or round cans in general.

Nor does Blankenship show a container (of any shape) that burns gelled alcohol fuel, or which permits vapors from alcohol gel fuel to escape. Instead, Blankenship specifically provides a burner for "liquid fuel" (see, e.g., Column 1 at lines 5, 25 and 50), which burns differently from gelled alcohol.

In addition, there many other differences between Blankenship's invention and my own.

For example, Blankenship's invention produces one flame, referred to as "the flame" in Column 1, line 26. My invention, however, produces multiple flames.

Also, Blankenship's invention specifically requires the use of a wick, 18. My invention does not require the use of a wick.

In addition, Blankenship's invention requires the use of many more components that my invention does.

My cartridge has no internal components, whereas Blankenship's invention requires numerous internal components. These include, for example, a support member 16, a cardboard cylinder 21, a fibrous bat 22, and a plastic bat 23.

My cartridge does not require any of these.

Numerous other differences exist between my invention, and my cartridge, and the invention disclosed by Blankenship. The other differences will not be detailed here, however, unless the Honorable Claims Examiner requests further discussion on this point.

\* \* \* \*

The differences between Blankenship, Waddell and Orlov and my invention indicate my Claim 5 (Newly Presented), contained herein, should be allowed.

Because I am not a patent attorney, however, to the extent Claim 5 (Newly Presented) is still not worded correctly, if indeed this is the case, I hereby request the Honorable Claim Examiner to assist me in writing an allowable claim.

### CLAIM 3

The Office Action objected to the term “logset for simulating fireplace fires.” Accordingly, this objection is solved by the wording of newly presented claims which appear at the end of this document.

Claim 3 was also rejected as being anticipated by Rehberg et al (US Patent 4,940,407), or Zei et al (US Patent 1,432,942) or Marino (US Patent 2,508,959). Each of these objections will be addressed separately.

As to Rehberg, the Office Action states Rehberg discloses a non-combustible log “for simulating fireplace consisting of a unitary body...which is substantially in the form of a U-shape with sidewalls...added on the left and right, whose top wall has multiple flame exit openings....”

With respect, however, it should be noted that Rehberg does not disclose a unitary body, but rather, a series of bodies that may: (1) be positioned next to each other, (2) rest across each other, and (3) rest on top of each other.

This is clearly pointed out in Rehberg, Column 4, lines 49 - 63, which refer to “logs” in the plural. These “logs” lie next to each other, across from each other and on top of each other.

Each log piece is given a separate component number, i.e., 100, 101 and 105.

As Rehberg states:

Simulated **logs 100 and 101** (FIGS 1-2) **are** preferably made of cast concrete...[p]referably, the ends of the **logs** are joined by narrow integrally cast links 103 which maintain a fixed **spacing** and **positioning** of the **logs**....The **logs** are cast with flat bases...Preferably, a **pair** of small, cast-concrete simulated **logs 105** rest **across** and **on the tops** of the logs **100 and 101**... (emphasis added)

Clearly, the references to "logs" in the plural, and the identification of several different pieces.

Additional proof that Rehberg discloses a plurality of "logs" is found in Rehberg's reference to a "pair" of logs that are "connected" to each other, and another "pair" of logs that are "non-connected". As Rehberg states in Column 1, lines 45-48:

A burner assembly rests on the refractory plate, and supports a pair of connected and integrally cast-concrete simulated logs and a pair of nonconnected logs.

This is a clear reference to several logs which are first cast, and then afterwards are connected to each other or rest on each another. This does not describe a single piece log set, as my application does. See, e.g., page 9, line 27 of my application, which refers to a "one piece logset".

For this reason, and many others which I will detail if the Honorable Claim Examiner so wishes, I do not believe Rehberg's invention discloses my one piece log set.

\* \* \*

As to Zei, the Office Action states this patent "discloses a non-combustible log...comprising of a unitary body which is substantially in the form of a U-shape with sidewalls, and whose top wall has multiple exit openings (19)..."

With respect, however, Zei does not state his log is "non-combustible". He does not even mention the log's combustibility.

Although Zei says his log is preferably made out of terra cotta (page 1, line 45), he does not rule out other materials, such as wood.

Indeed, Zei specifically mentions that his invention only holds a 50 watt bulb (page 1, line 93), which does not generate excessive amounts of heat. "Combustibility" therefore, is not even an implied topic in Zei's invention.

In any event, Zei does not claim his log is non-combustible.

Moreover, Zei's log does not have flame exit apertures. Instead of flame exit apertures, Zei claims "narrow slots extending through the walls, the direction of said slots through said walls being sufficiently oblique to rays from said illuminating means that said walls remain opaque to direct rays from said illuminating means." (Page 1, line 107 - Page 2, line 2.)

"Narrow slots" of this type, illustrated as component 19 in his figures, are not flame exit apertures.

Zei does not claim these "narrow slots" may allow fireplace flames to pass through them. Indeed, component 19 in Zei shows they are so narrow that they will not allow fireplace flames to pass through.

For this reason, and many others which I will detail if the Honorable Claims Examiner so wishes, I do not believe Zei's invention discloses my own.

Lastly, the Office Action states that Claim 3 is rejected because Marino Patent (US 2,508,959) discloses a logset "for an imitation fireplace comprising a unitary body which is substantially in the form of a U-shape with sidewalls, and whose top wall has multiple exit openings..."

The openings in Marino, however, are "...outlet openings 28 through which the fumes of the burning incense" pass. (emphasis added)

Marino does not describe: (1) openings through which flames may emanate and (2) openings through which flames emanate that simulate a realistic fireplace fire.

Nor does Marino discuss a unitary body. Instead, Marino discusses several log shaped "elements" in the plural (Column 1, line 50) which are then "arranged" in a particular fashion. Column 1, line 54.

For these reasons I believe the newly presented claims which appears at the end of this document, are allowable and should be allowed.

Because I am not a patent attorney, however, to the extent Claims 4-5 (Newly Presented) are still not worded correctly, if indeed this is the case, I hereby request the Honorable Claim Examiner to assist me in writing allowable claims.

Please call me with any questions. My number is (212) 736-2624, ext. 12.

Thank you.

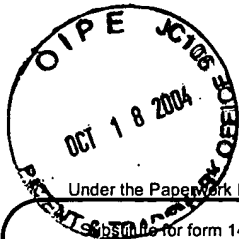
Michael Weinberger 10/08/2004

 10/8/04

Claims 4 - 5 (Newly Presented) appear following.

Claim 4 (Newly Presented): An apparatus consisting of a generally rectangular shaped fuel cartridge having a width that is greater than its depth, said cartridge consisting of metal sidewalls of a given height, a metal base and a metal top defining an interior space containing alcohol gel fuel, said top comprising at least one flame exit aperture of generally rectangular shape which permits fumes from the alcohol gel fuel to emanate from the interior space of the cartridge, the apparatus further consisting of a generally rectangular shaped simulated log set, said simulated log set formed from a noncombustible material and shaped as a unitary cast element including a top, said top comprising multiple flame exit opening formed between a plurality of simulated log set simulated elements which are formed to present the appearance of multiple logs and twigs touching one another, where said generally rectangular shaped log set is shaped and configured to define a generally rectangular internal cavity open on a bottom side thereof, said generally internal cavity being sized and dimensioned to be slightly larger than the width, depth and height of the fuel cartridge such that the fuel cartridge fits inside the cavity, where said log set is fitted around and over said fuel cartridge to permit portions of a flame formed from combustion of the fumes from the alcohol gel fuel rising from at least one flame exit aperture of generally rectangular shape fuel cartridge to pass through the multiple flame exit openings and extend to a location above the top of the simulated log set, thereby simulating a realistic fireplace fire by producing multiple flames that are surrounded by multiple simulated logs and simulated twig elements.

Claim 5 (Newly Presented): A generally rectangular shaped fuel cartridge having a width that is greater than its depth, said cartridge consisting of metal sidewalls of a given height, a metal base and a metal top defining an interior space containing alcohol gel fuel, said top comprising at least one flame exit aperture of generally rectangular shape which permits fumes from the alcohol gel fuel to emanate from the interior space of the cartridge, where the combustion of the said fumes produces a generally rectangular shaped fire without manual controls or additional components.



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STATEMENT BY APPLICANT**

(Use as many sheets as necessary)

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of

**Complete if Known**

Application Number	10/757,096
Filing Date	11/4/2004
First Named Inventor	Weinberger, Michael
Art Unit	
Examiner Name	Carl D. Price
Attorney Docket Number	LOJM 1999

**U. S. PATENT DOCUMENTS**

Examiner Initials*	Cite No. <sup>1</sup>	Document Number	Publication Date MM-DD-YYYY	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear *
		Number-Kind Code <sup>2</sup> (if known)			
		US- 4 573 905	03-1986	Meyers	
		US- 4 838 781	06-1989	Fischer	
		US- 4 582 478	04-1986	Hilker	
		US- 4 575 379	03-1986	Browning	
		US- 4 637 372	01-1987	Mogol	
		US- 4 076 490	02-1978	Hilker	
		US- 3 993 430	11-1976	Forker	
		US- 5 584 283	12-1996	Messina	
		US- 5 829 966	11-1998	Stoner	
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discussion  
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**FOREIGN PATENT DOCUMENTS**

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